

**STATE OF MARYLAND
BOARD OF CONTRACT APPEALS
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**SUMMARY ABSTRACT
DECISION OF THE MARYLAND STATE BOARD OF CONTRACT APPEALS**

Docket No. 2556	Date of Decision: 9/12/06
Appeal Type: <input checked="" type="checkbox"/> Bid Protest	<input type="checkbox"/> Contract Claim
Procurement Identification: Under SHA Contract No. XX8065177	
Appellant/Respondent: C. J. Miller, LLC State Highway Administration	

Decision Summary:

Minority Business Enterprise - Jurisdiction - Pursuant to COMAR 21.11.03.14, acts or omissions by a procurement agency regarding Minority Business Enterprise (MBE) issues may not be appealed, and the MSBCA is, therefore, without jurisdiction to hear such appeals.

THESE HEADNOTES ARE PRODUCED FOR ADMINISTRATIVE REFERENCE AND OPERATIONAL USE ONLY AND SHOULD NOT BE CONSIDERED "OFFICIAL TEXT" OF THE DECISION OF THE MARYLAND STATE BOARD OF CONTRACT APPEALS, NOR SHOULD IT BE REFERENCED OR GIVEN ANY LEGAL STATUS. A COPY OF THE FULL AND COMPLETE DECISION SHOULD BE CONSULTED AND REFERENCED. FOR FURTHER INFORMATION, CONTACT THE BOARD OF CONTRACT APPEALS.

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

In The Appeal of C. J. Miller,)
LLC)
) Docket No. MSBCA 2556
)
Under SHA Contract No.)
XX8065177)

APPEARANCE FOR APPELLANT: Scott A. Livingston, Esq.
 Rifkin, Livingston, Levitan &
 Silver, LLC
 Greenbelt, MD

APPEARANCE FOR RESPONDENT: Scot D. Morrell
 Assistant Attorney General
 Baltimore, MD

APPEARANCE FOR INTERESTED PARTY: Nick R. Hoogstraten, Esq.
(Richard F. Kline, Inc.) Peckar, Abramson, Bastianelli &
 Kelley, LLP
 Washington, DC

OPINION BY BOARD MEMBER DEMBROW

The Maryland State Highway Administration (SHA) filed an unopposed Motion to Dismiss the instant appeal on the basis that the Maryland State Board of Contract Appeals does not have jurisdiction to entertain this protest pursuant to the Code of Maryland Regulations, namely, COMAR 21.11.03.14, which specially excludes this Board from hearing matters arising under the chapter of procurement regulations governing minority business enterprise (MBE) issues. That Motion is hereby granted.

Findings of Fact

1. On or about August 4, 2006, appellant, by and through counsel, filed a Notice of Appeal of a certain procurement decision made by SHA in contract No. XX8065177 pertaining to the milling, grinding, patching and resurfacing of certain roadways in Carroll and Frederick Counties, Maryland for which competitive bids were accepted by SHA on or about April 20, 2006, including a bid by appellant which was in the amount of \$3,190,120 and is alleged by appellant to be the lowest responsive bid received.
2. The only issue raised in this appeal is whether appellant complied with SHA's stated MBE participation goals in submitting the low bid to perform the subject work, which SHA deemed to be nonresponsive because the bid was determined by SHA to have failed to fulfill or request waiver of a stated 9% MBE subcontractor participation requirement, though appellant's initial bid promised an 8.8% participation rate, and its affirmative action plan submitted April 21, 2006 indicated an MBE participation rate of 9.5%.
3. The Maryland State Board of Contract Appeals does not have jurisdiction to hear a dispute concerning MBE compliance pursuant to COMAR 21.11.03.14.
4. Appellant recognizes the absence of jurisdiction over this dispute by this Board and as a result, the State's August 18, 2006 Motion to Dismiss is unopposed.

Decision

The State's Motion to Dismiss is hereby granted pursuant to COMAR 21.10.05.06(c), and this appeal is

dismissed for lack of jurisdiction by the Maryland State Board of Contract Appeals pursuant to COMAR 21.11.03.14.

Wherefore, it is Ordered this day of September, 2006 that the above-captioned appeal is dismissed with prejudice.

Dated:

Dana Lee Dembrow
Board Member

I Concur:

Michael W. Burns
Chairman

Michael J. Collins
Board Member

Certification

COMAR 21.10.01.02 **Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

Annotated Code of MD Rule 7-203 **Time for Filing Action.**

(a) Generally. - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party. - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 2556, appeal of C.J. Miller, LLC under SHA Contract No. XX8065177.

Dated:

Michael L. Carnahan
Deputy Clerk